

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 300 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

BAI PARVATI @ PALI, D/O KUBERDAS FAKIRCHAND

Versus

SUMANBEN WD/O GAMANLAL ATMARAM

Appearance:

MR SN SHELAT for Petitioners
MS VASUBEN P SHAH for Respondent No. 1

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 18/07/2000

ORAL JUDGEMENT

This is a Civil Revision Application filed under
Sec. 29(2) of the Bombay Rents Hotels & Lodging House
Rates Control Act, 1947 (in short "the Act"), by original
plaintiffs-landlords who had filed Small Cause Suit No.
659 of 1979 in the Court of learned Judge, Small Causes

Court at Surat (who will be hereinafter referred to as "the learned Judge of the trial court") challenging the correctness, legality, propriety and regularity of judgment Ex.10 dated 31st August, 1988 rendered by the learned Joint District Judge, Surat (who will be hereinafter referred to as "the learned Judge of the appellate court) in Regular Civil Appeal No. 34 of 1985, whereby he confirmed the judgment Ex.60 of the learned Judge of the trial court.

2. Here in this Civil Revision Application, revision-petitioners are the plaintiffs-landlords and the revision-opponents are the heirs and legal representatives of deceased Gamanlal Atmaram, who was original defendant-tenant. The parties will be referred to hereinafter as the plaintiffs and defendant for the sake of convenience.

3. The facts leading to this Civil Revision Application in a nutshell are as follows:-

Plaintiffs are the owners of suit property bearing Nondh No. 4090-A situated at Zampa Bazaar, Ward No.4 at Surat. From this suit property, premises bearing Nondh No. 4089 situated on the western side are belonging to plaintiffs and from that premises, ground floor portion has been let out to heirs and legal representatives of deceased defendant -Gamanlal Atmaram on monthly rent of Rs.10/- payable on every 1st day of the month, and therefore, there is no dispute with regard to relationship between plaintiffs and defendants that of landlords and tenants. The plaintiffs filed a suit bearing Small Causes Suit No. 659 of 1979 against the heirs and legal representatives of deceased Gamanlal Atmaram in the Court of learned Judge, Small Causes Court at Surat for a decree of eviction of suit premises together with mesne-profits for a period from 1st March, 1979 onwards, mainly on the following three grounds :-

(1) that defendants are tenants in arrears of rent for more than six months and hence their case is falling under Section 12(3)(a) of the Act.

(2) that the suit premises are reasonably and bonafide required by the plaintiffs and their family members and hence their case is falling under Section 13(1)(g) of the Act; and

(3) that defendants have acquired vacant possession of suitable residence and hence their case is falling under Section 13(1)(1) of the Act.

Before filing the suit, plaintiffs had, by giving a notice dated 22nd February, 1979, terminated tenancy of defendants and defendants were called upon to hand over the possession of the suit premises to plaintiff, and also to pay rent for a period upto 28th February, 1979. On receipt of suit notice, defendants neither vacated the suit premises, nor they acted upon as called upon by the plaintiffs.

In the suit, defendants appeared and resisted the suit by filing written statement at Ex.10 and additional written statement at Ex.16. Defendants had denied practically all pleadings of the plaintiffs pleaded in the plaint. It is the case of the defendants that the suit premises are not reasonably and bonafide required by the plaintiffs, and in case, if court comes to a conclusion that plaintiffs have made out their case under Section 13(1)(g) of the Act, then greater hardships would be caused to defendants, if decree is passed, in comparison to the hardships which would be caused to the plaintiffs, if decree is refused. The defendants have narrated the facts with regard to hardship which they would experience, if decree is passed. As against the case of the plaintiffs that defendants have acquired premises for a suitable residence, it is the case of the defendants that premises situated at Katargam, Kruti Society are not their property, but it is a property of Shardaben Amrutlal, and that defendants were mere Binamidars, and therefore, that house is already transferred in the name of Shardaben, and defendants have got no right, title or interest or control over that property of Shardaben. From the pleadings of both the parties, the learned Judge of the trial court framed necessary issues at Ex.17. Both the parties have led their oral as well as documentary evidence in that suit. After hearing the arguments of learned advocates of both the parties, and after appreciating the evidence led by both the parties, the learned Judge of the trial court negatived the case of the plaintiffs and ultimately, by rendering his judgment Ex.60 dated 27th December, 1984, the plaintiffs' suit was dismissed with costs.

4. Being dissatisfied with and aggrieved against the said judgment Ex.60 dated 27th December, 1984, original plaintiffs i.e. landlords filed Regular Civil Appeal No. 34 of 1985 in the District Court at Surat. In that appeal, after hearing the arguments of the learned advocates of both the parties and after perusing Record and Proceedings of the suit and also after analysing evidence led by both the parties in the suit before the

trial court, the learned Judge of the Appellate Court was pleased to dismiss the appeal filed by the landlords by rendering his judgment Ex.10 dated 31st August, 1988, he was pleased to dismiss the appeal, meaning thereby that the judgment Ex.60 of the trial court was confirmed.

5. Being dissatisfied with and aggrieved against the said judgment Ex.10 of the learned Judge of the Appellate Court, original landlords who were the appellants in the appeal have preferred this Civil Revision Application challenging the correctness, legality, propriety and regularity of the said judgment Ex.10 of the learned Judge of the Appellate Court.

6. I have heard Mr. M.R.Mengda, learned advocate for the revision-petitioners and Ms. Sneha Joshi, learned advocate for revision -opponents in detail at length. I have perused the judgment of the Judge of the Appellate Court challenged in this Civil Revision Application. It would be in the fitness of things and profitable to know the legal position with regard to scope and ambit of Sec.29(2) of the Act and also powers of this court which can be exercised under Sec.29(2) of the Act. In case of PATEL VALMIK HIMATLAL vs. MOHANLAL MUJIBHAI reported in 1998(7) SCC 383, the Hon'ble Supreme Court has made it clear that the powers under Sec.29(2) of the Bombay Rent Act are revisional powers with which the High Court is clothed and that Sec.29(2) empowers the High Court to correct errors which may make the decision contrary to law and which errors go to the root of the decision. It is also made clear that Sec.29(2) does not vest the High Court with the power to rehear the matter and reappreciate the evidence. The mere fact that a different view is possible on reappreciation of the evidence cannot be a ground for exercise of the revisional jurisdiction and the High Court cannot substitute its own findings on a question of fact for the findings recorded by the courts on reappraisal of evidence.

7. In recent case of VANITA JAIN V. JAGJITSINH reported in AIR 2000 SC (Weekly), 2000, Sec.15(6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (which is akin to Sec.29(2) of the Act) dealt with by the Hon'ble Supreme Court, wherein it has been held that sub-sec.(6) of Section 15 of the Haryana (Control of Rent and Eviction), Act, 1973 empowers the High Court to exercise its revisional jurisdiction for the purpose of satisfying itself, if an order passed by the Rent Controller or Appellate Authority, is in accordance with law. A perusal of sub-sec.(6) of Sec. 15 of the Act shows

that the power of High Court to revise an order is not an appellate power, but it is also true that it is not akin to power exercisable under Section 115 of the Civil Procedure Code. It is no doubt true that the High Court would be justified in interfering with the order passed by the Appellate Authority, if legality and propriety of such order demands such interference. But the High Court in its revisional jurisdiction cannot reassess or re-evaluate the evidence only to come to a different findings than what has been recorded by the lower court.

8. Shri Mengda, the learned advocate for the revision -petitioners has vehemently argued that both the courts have not appreciated evidence led by the plaintiffs on both the points one of reasonable and bonafide requirement of the suit premises for plaintiffs and their family members, and another for hardship of plaintiffs, if decree is refused. He has further argued that both the courts below have not appreciated evidence in its correct perspective to come to a conclusion that greater hardship would be caused to plaintiffs, if decree is refused. Main thrust of the arguments of Shri Mengda was to the effect that both the courts below have not appreciated the evidence in a manner in which the evidence ought to have been appreciated, and therefore, he has argued that this court should consider the evidence led by both the parties and come to a conclusion that plaintiffs have made out their case falling under Sec.13(1)(g) read with Sec.13(2) of the Act.

9. Ms. Sneha Joshi, the learned advocate for and on behalf of revision -opponents has resisted this Civil Revision Application on the ground that when there is concurrent findings of both the courts below, on facts as well as on law, this court should not interfere with the findings arrived at by the learned Appellate Judge.

10. Shri Mengda has taken this court through the judgment rendered by the Appellate Judge. It clearly appears that the learned Appellate Judge has critically analysed and appreciated each piece of evidence brought on record, and therefore, the findings arrived at by the appellate Judge in no case can be said to be the finding not according to law. Shri Sneha Joshi also read Para 14 of the judgment of the Appellate Judge and argued that the learned Appellate Judge has considered the evidence in its correct perspective and when there is a consistent and concurrent finding of both the courts below, the judgment of the appellate court deserves no interference by this court. A pertinent question was put to Mr. Mengda as to whether there is any legal question involved

in this Civil Revision Application, to which Mr. Mengda is not in a position to point out any legal question on reading the Judgment of the Appellate Judge.

11. Considering the arguments and having perused the evidence on record, I am satisfied that the learned Appellate Judge has, while rendering the judgment, correctly borne in mind the principles of law and has appreciated the facts properly. In no case, it can be said that no contrary view can be taken on the basis of evidence led by both the parties. Under the circumstances, when there is concurrent and consistent findings of both the courts below, and when those findings are not illegal, perverse and erroneous, then this court cannot set up a new case by substituting its own findings on those of the lower courts.

12. In view of the discussion made hereinabove, this Civil Revision Application is devoid of any merits, and the same deserves to be dismissed, and accordingly, this Civil Revision Application is dismissed. Rule is discharged. There shall be no order as to costs.

Date: 18/7/2000. (H.H. MEHTA, J.)

ccshah